

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA (Pittsburgh)**

**IN RE:**

**DONALD GILLECE, SR.**

**Debtor**

**BK. No. 17-22183 CMB**

**Chapter No. 13**

**U.S. ROF IV LEGAL TITLE TRUST 2015-1, BY  
U.S. BANK NATIONAL ASSOCIATION, AS  
LEGAL TITLE TRUSTEE**

**Movant**

**Hearing Date: 3/21/18**

**Hearing Time: 10:00 a.m.**

**v.**

**DONALD GILLECE, SR.**

**and**

**RONDA J. WINNECOUR, ESQUIRE  
(TRUSTEE)**

**Respondents**

**MOTION TO DISMISS PURSUANT TO 11 U.S.C. §§1307(c) AND 105 OR IN THE  
ALTERNATIVE FOR RELIEF FROM THE AUTOMATIC STAY UNDER §362**

Movant, by its attorneys, PHELAN HALLINAN DIAMOND & JONES, LLP, respectfully request that this Honorable Court dismiss Debtor bankruptcy pursuant to 11 U.S.C §§1307(c) and 105, or in the alternative, requests termination of the Automatic Stay and leave to foreclose on its mortgage on real property owned by Debtor located at **220 MAIN STREET, WEST ALEXANDRIA, PA 15376**.

1. Movant is **U.S. ROF IV LEGAL TITLE TRUST 2015-1, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE**.

2. Debtor, DONALD GILLECE, SR. is the owner the owner of the premises located at **220 MAIN STREET, WEST ALEXANDRIA, PA 15376**, hereinafter known as the mortgaged premises.

3. Movant is the holder of a mortgage on the mortgaged premises.

4. Movant **U.S. ROF IV LEGAL TITLE TRUST 2015-1, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE** wishes to institute foreclosure proceedings on the Mortgage because of Debtor's failure to make payments required hereunder.

5. The foreclosure proceedings to be instituted were stayed by the filing of the instant Chapter 13 Petition.

6. Movant incorporates the allegations in paragraphs 1 through 5, as though fully set forth herein.

7. The Debtor actions violate 11 U.S.C. §§1307(c) and 11 U.S.C. §105, in that the Debtor has failed to make the required payments to the Chapter 13 Trustee.

8. The actions of DONALD GILLECE, SR. violate Bankruptcy Rule 9011, as this filing is for an improper purpose, which is to harass or to cause unnecessary delay or needless increase in the cost of litigation.

9. Debtor bankruptcy should be dismissed, and DONALD GILLECE, SR. . should be prohibited from filing or refiling a bankruptcy, either singularly or jointly, for a period of One Hundred Eighty (180) days.

## **COUNT II - MOTION FOR RELIEF**

10. Movant incorporates the allegations in paragraphs 1 through 10, as though fully set forth herein.

11. The Debtor's petition was filed in bad faith. The Debtor does not appear to have the ability to make monthly payments to the Chapter 13 Trustee.

12. Debtor may have equity in the mortgaged premises.

13. Movant has cause to have the Automatic Stay terminated as to permit Movant to complete foreclosure on its mortgage and to allow Movant or any other purchaser at Sheriff's Sale to take legal action for enforcement of its right to possession of, or title to, the said premises.

14. Movant, it's successors and assignees posits that due to Debtor's continuing failure to tender post-petition mortgage payments and the resulting and ever increasing lack of adequate protection that said failure presents, sufficient grounds exist for waiver of Rule 4001(a)(3), and that Movant, its successors or assignees should be allowed to immediately enforce and implement the Order granting relief from the automatic stay.

**WHEREFORE**, Movant respectfully requests that this Court enter an Order;

a. modifying the Automatic Stay under §362 with respect to **220 MAIN**

attached to the Mortgage of record granted against the Premises), as to allow Movant, its successors and assignee's, to proceed with its rights under the terms of said Mortgage; and

b. that any future bankruptcy cases filed by Debtor, DONALD GILLECE either singularly or jointly, within One Hundred Eighty (180) days of the date of this Court Order, without first seeking leave of Court, will not stay any actions taken by Movant or any other purchaser at Sheriff's Sale from proceeding with any legal or consensual actions necessary for enforcement of its right to possession of, or title to, said premises; and

c. any other relief that this Court deems equitable and just.

February 23, 2018

/s/ James A. Prostko, Esquire  
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